CAMPBELL, FEDERAL PROHIBITION ADMINISTRATOR, ET AL. *v.* GALENO CHEMICAL COMPANY ET. AL.

SAME *v.* D. P. PAUL & COMPANY, INCORPORATED.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Nos. 443 and 444. Argued April 25, 1930.—Decided May 26, 1930.

1. A basic permit granted under § 4, Title II, of the Prohibition Act, to manufacture articles such as toilet, medicinal and antiseptic preparations, containing intoxicating liquor but unfit for beverage purposes, is not within the provision of § 6 that "permits to manufacture, prescribe, sell or transport liquor . . . shall expire on the 31st day of December next succeeding the issuance thereof." P. 606.
2. Such a basic permit issued under § 4, to be in force until "revoked, suspended or renewed as provided by law or regulations," sufficiently complies with the provision of § 6 (assuming but not deciding it to be applicable,) that every permit shall designate the time when the permitted acts may be performed. P. 608.
3. Such a basic permit issued under § 4 to remain in force "until revoked, suspended or renewed as provided by law or regulations," is not subject to be revoked by a subsequent regulation fixing a time limit for unexpired permits, but is revocable only for cause as provided in §§ 5 and 9, upon notice and hearing, with a right to judicial review. P. 609.

4. Regulations issued under a statute may not extend or modify its provisions. P. 610.

34 F. (2d) 642, affirmed.

CERTIORARI, 280 U. S. 548, to review decrees of the Circuit Court of Appeals affirming decrees of injunction in two suits against a Prohibition Administrator, the Commissioner of Prohibition, and the Secretary of the Treasury to restrain the revocation of permits issued to the plaintiffs under § 4 of the Prohibition Act.

Assistant Attorney General Youngquist, with whom *Attorney General Mitchell*, *Messrs. Mahlon D. Kiefer* and *John H. McEvers* were on the brief, for petitioner.

Permits to manufacture "liquor" may be issued for one year, but they expire by operation of law "on the 31st day of December next succeeding the issuance thereof." (§ 6, Title II, National Prohibition Act.) At the time of being manufactured and before being prepared for the market, denatured alcohol and medicinal preparations containing more than one-half of one per cent. of alcohol by volume are "liquor" within the meaning of § 6. Permits to manufacture denatured alcohol and medicinal preparations are therefore permits to manufacture "liquor," and expire by operation of law "on the 31st day of December next succeeding the issuance thereof." *Higgins* v. *Foster*, 12 F. (2d) 646; *Cywan* v. *Blair*, 16 F. (2d) 279; *Chicago Grain Products Co.* v. *Mellon*, 14 F. (2d) 362; *United States* v. *Woodward*, 256 U. S. 632.

If permits to manufacture denatured alcohol and medicinal preparations be not permits to manufacture "liquor," nevertheless every permit which the Commissioner is authorized to issue must "designate and limit the acts that are permitted and the time when and place where such acts may be performed." § 6, Title II. When

Congress used the words "designate" and "limit" it meant a definite designation and a definite limitation. Accordingly, a permit having an indefinite time limitation was unauthorized. Regulations 2 and 3 brought the practice into accord with the statute and are therefore valid. See *Higgins* v. *Mills*, 22 F. (2d) 913. *Driscoll* v. *Campbell*, 33 F. (2d) 281; *Lewellyn* v. *Harbison*, 31 F. (2d) 740; *Chicago Grain Products Co.* v. *Mellon*, 14 F. (2d) 362; *Yudelson* v. *Andrews*, 25 F. (2d) 80.

If Congress did not provide for the termination of § 4 permits on definite dates, it left the matter open to control by regulations to be issued from time to time. The exercise of a delegated power is not to be once used and forever lost. The administrative officers, acting in a field inherently subject to police regulations, could not bargain away the rights of the public in such manner as to preclude the future exercise of the powers delegated. Section 9, Title II, of the National Prohibition Act has reference to functions judicial in their nature conferred on the administrative officers; to inquiries as to whether an individual permit should be revoked. It in no way relates to the delegated quasi-legislative power to establish regulations.

Mr. John Fletcher Caskey argued the cause and submitted a brief for respondents, and *Mr. Charles Dickerman Williams* also submitted a brief for respondents.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

These cases deal with the power of the Commissioner of Prohibition to revoke basic permits to use intoxicating liquors in the manufacture of medicinal preparations. Section 6 of the National Prohibition Act, October 28, 1919, c. 85, Title II, 41 Stat. 305, 310, declares: "No one shall manufacture, sell, purchase, transport, or prescribe

October 1, 1927, is a valid exercise of that power. This contention, also, is unsound.

The limits of the power to issue regulations are well settled. *International Ry. Co.* v. *Davidson*, 257 U. S. 506, 514. They may not extend a statute or modify its provisions. The regulation of October 1, 1927, purports to revoke unexpired permits as of December 31, 1928, without resort to the proceedings prescribed by §§ 5 and 9. It thus attempts to deprive permittees of rights secured to them by these sections of the Act. As was said in *Higgins* v. *Foster*, 12 F. (2d) 646, 648: "We cannot see that the Commissioner, under the guise of legislation, may do in gross what he had no power to do in detail." Whether or not the power to make regulations, or the provision in § 6, authorizes the Bureau to fix expiration dates for permits when issued, it does not authorize the revocation of existing permits in violation of the express provisions of the Act.

Affirmed.